

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

VIKTOR KOZENY,
FREDERIC BOURKE, JR., and
DAVID PINKERTON,

Defendants.

05 Crim. 518 (SAS)

DECLARATION OF
PAUL B. STEPHAN

I, PAUL B. STEPHAN, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I have previously submitted declarations concerning issues of Azeri law on April 7, 2008 and June 23, 2008. I have also spent substantial time reviewing the declaration of William E. Butler and its accompanying exhibits, dated August 21, 2008 (“Butler Decl.”). In light of the Court’s order of August 28, 2008, I am submitting this declaration in advance of the scheduled September 11 hearing to outline the points I intend to make on direct examination regarding the areas of agreement and disagreement between Professor Butler and myself.

2. After reviewing Professor Butler’s declaration, I recognized that there were significant areas of agreement between us regarding the relevant sources of Azeri law and the content of that law. Indeed, given the opinions set forth in Professor Butler’s declaration, I believe that there will be no substantial disagreement as to the content of at least three of the four suggested jury instructions I intend to discuss at the hearing (which are appended at Tabs 18

through 21). The exhibits appended to this declaration at Tabs 3 through 9 summarize our major areas of agreement with reference to the relevant paragraphs of our respective declarations.¹

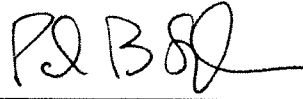
3. Moreover, I agree with Professor Butler on one additional point that he raises that was not addressed in my previous declarations—specifically, that “merely an offer to give a bribe on the part of the interested person without performing any specific actions directed towards transferring the subject of the bribe to the official does not entail criminal responsibility.” Butler Decl. ¶ 21.

4. I also wish to call the Court’s attention to the areas of disagreement between Professor Butler and myself. The exhibits appended at Tabs 10 through 17 summarize our areas of disagreement with reference to the relevant paragraphs of our respective declarations. Our primary area of disagreement appears to concern the question of what types of interests may make up the subject of an extortionate threat under Azeri law. During my direct examination at the September 11 hearing, I expect to testify more fully about the nature of these disagreements, and as to why I believe that Professor Butler’s views are incorrect.

5. In order to assist the Court in making its findings as to the content of Azeri law, I have provided suggested jury instructions setting forth the relevant laws of Azerbaijan concerning bribery and extortion. These suggested instructions are appended at Tabs 18, 19, 20 and 21.

¹ I understand that counsel intends to mark my and Professor Butler’s declarations as Exhibits 1 and 2 during my direct examination at the September 11 hearing. I have therefore omitted these Tab numbers so that the Tab numbers used in this declaration will track the Exhibit numbers at the hearing.

Dated: New York City, New York
September 8, 2008

A handwritten signature in black ink, appearing to read 'P.B. Stephan', written over a horizontal line.

By: Paul B. Stephan
University of Virginia School of Law
Charlottesville, Virginia